THE HONOUABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.10846 of 1995

Between:

K.Kistaiah. **.. PETITIONER**

AND

The Regional Manager and another.

.. RESPONDENTS

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

ORDER:

-

-

The proceedings of the 2nd respondent, dated 17-05-1995, whereby the petitioner, who was working under the Controller of Jeedimetla Depot, was transferred and posted to Midhani Depot on reversion, is impugned in this writ petition.

Facts, to the extent necessary, are that the petitioner was appointed as a conductor on 11-12-1967. He was removed from service on being found guilty of certain charges and was appointed afresh as conductor with effect from 17-02-1972. The petitioner was removed from service on 20-07-1974. Pursuant to the award of the Tribunal in I.D.No.294 of 85, dated 27-04-1987, the petitioner was reinstated into service with effect from 28-03-1988. Under the award, the petitioner was to be reinstated into service and his past service was to be taken into account for the purpose of gratuity only and not for any other benefits and his pay was to be fixed in the minimum scale of pay. Consequent upon his reporting back to duty on 28-03-1988, the petitioner's seniority was reckoned in the category of conductor from that date.

In exercise of the powers conferred under Regulation 30 of the APSRTC Regulations, which empowers the APSRTC to effect promotions on a temporary basis, the petitioner was promoted to the post of ADC/Controller vide proceedings, dated 01-03-1995. Thereafter the seniority list was finalized and the petitioner stood at Sl.No.3471 in the seniority list of conductors. 51 persons were promoted as ADCs/Controllers under Regulation 30 in February and March 1995 on emergency basis, by which time, the seniority list of conductors for the region had not been finalized. After verification of the personnel records, and seniority being fixed, the petitioner was shown at Sl.No.3471 in the seniority list of conductors. According to the respondents since the petitioner had not come up within the range of seniority of conductors for promotion to the post of ADC/Controller and since no persons junior to the petitioners were continued in the cadre of controller, the petitioner was not entitled to continue as ADC/Controller and was therefore reverted on 24-05-1995.

Sri A.K.Jaya Prakash Rao, learned counsel for the petitioner, would submit

that the impugned order reverting the petitioner as conductor, vide proceedings dated 24-05-1990, is bereft of reasons and that consequent upon a non-speaking order being set aside, the petitioner would automatically continue to remain in service as an ADC/Controller. Learned counsel would submit that at the time of filing of the writ petition, the petitioner was aged 50 years and if the normal age of superannuation of 58 years is taken into account, the petitioner would have already retired from service in the year 2003 itself. Learned counsel would submit that on the impugned order being set aside for not assigning reasons, the petitioner is entitled to be treated as having been continued in service as ADC/Controller and to be paid his terminal benefits in the said category. Learned counsel would further submit that even if this court were of the view that the impugned order of the respondents is required to be upheld, on the ground that the petitioner is not senior enough to be promoted as ADC/Controller, subsequent to filing of the writ petition, the petitioner may have been entitled to be promoted as ADC/Controller in accordance with his seniority and would have been entitled to be promoted to the said post from the date on which he was so eligible, in which event, the petitioner would be entitled to be paid his terminal benefits in the higher post of ADC/Controller.

From the facts stated above, it is clear that the petitioner was promoted on a temporary basis under Regulation 30 of the APSRTC Regulations to the higher post of ADC/Controller, vide proceedings, dated 13-03-2003, in view of the fact that the seniority list of conductors had not been finalized. Such adhoc/temporary promotions, without complying with the statutory requirement of a regular process of selection would not confer any right on persons so promoted on an adhoc/temporary basis, to continue in the higher post. Since the petitioner was reverted to his original post of conductor, after the seniority list of conductors was finalized, as he was not senior enough to be promoted as ADC/controller and as no person junior to him in the said seniority list was promoted, the impugned order of the respondents dated

24-05-1995 cannot be faulted. As a result of the interim orders passed by this court, the petitioner continued in service as an ADC/controller and must have retired on reaching his age of superannuation in the year 2003. Since the petitioner discharged the duties of an ADC/Controller, pursuant to the interim order of this Court, irrespective of the illegality or otherwise of the impugned order dated 24-05-1995, he would be entitled to be paid the remuneration attached to the post which he was permitted to function. The respondents are not entitled to recover the differential pay from the petitioner herein, since he continued to work as an ADC/Controller till he reached the age of superannuation.

With regards payment of terminal benefits, once it is held that the impugned order of the respondents is in accordance with law, the terminal benefits payable to the petitioner has necessarily to be calculated only in his substantive post of a conductor. There is substantial force in the submission of Sri A.K.Jaya Prakash Rao, learned counsel for the petitioner, that even subsequent to the filing of the writ petition, the petitioner may well have been entitled to be promoted to the higher post of ADC/controller in accordance with his seniority. The respondents shall make a detailed exercise to determine as to whether at any stage prior to his retirement, the petitioner would have been eligible for promotion solely on the basis of his seniority to the higher post of ADC/Controller, in which event, he would be entitled to be paid his retiral/terminal benefits in the higher post from the date on which he was entitled to be promoted as an ADC/Controller in accordance with his seniority.

The writ petition is accordingly disposed of. No order as to costs.

_____

28-02-2006

Prv